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IN THE

Supreme Court of the United States

October Term, 1964.

No. 830.

LOCAL 25, MARINE DIVISION, INTERNATIONAL UNION OF OPERATING ENGINEERS ET AL.,
Petitioners,

v.

AMERICAN DREDGING COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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AMERICAN DREDGING COMPANY,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the District Court (App. A of Petition) is reported at 224 F. Supp. 985 (E. D. Pa. 1963). The opinion of the Court of Appeals for the Third Circuit, and the dissenting opinion (App. B and C of Petition) are reported at 338 F. 2d 837 (3d Cir. 1964).

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

Whether a United States District Court has removal jurisdiction of an action brought in a state court to enjoin a strike in violation of a collective bargaining agreement prohibiting strikes or suspensions of work, and providing for final and binding arbitration of grievances and disputes?

STATUTES INVOLVED.

The statutory provisions involved are set forth in App. F of the Petition.

STATEMENT.

On October 31, 1963, approximately 400 employees of American Dredging Company (Company) stopped work without notice and abandoned the floating equipment—dredges, barges and a drill boat—on which many of them were working (R. 68a).

At the time of the strike, there were in effect two collective bargaining agreements (Dredge Agreement and Drill Boat Agreement) providing for final and binding arbitration of grievances and disputes and prohibiting strikes, work stoppages and suspensions of work (R. 5a-7a, 14a, 68a).

It is admitted that during the week preceding the strike the Company specifically requested arbitration of certain disputes and has at all times stood ready to arbitrate any grievance or dispute under the contracts. The Union did not request arbitration of any grievance or dispute, and refused to utilize the contract procedures for peaceful resolution of differences (R. 37a-38a, 68a, 72a).

Following the commencement of the strike in clear violation of the no-strike agreements, the Company brought an action for an injunction in the Common Pleas Court of Philadelphia County on November 1, 1963 (R. 3a). A preliminary injunction was granted in accordance with Pennsylvania's Little Norris-LaGuardia Act (PA. STAT. ANN. tit. 43 § 206d), which permits an injunction against a strike or work stoppage in violation of a no-strike agreement.

Defendants promptly removed the case to the United States District Court for the Eastern District of Pennsylvania (R. 11a). The Company's motion to remand was denied by the district court (R. 18a, 22a). Since this was not an appealable order, the Company then moved for a preliminary injunction. The district court concluded that defendants had violated the agreement by engaging in a concerted work stoppage (R. 72a), but denied the Company's motion under *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962). The Company appealed, and the Court of Appeals for the Third Circuit reversed and ordered that the case be remanded to the state court.

ARGUMENT.

The narrow question presented here needs no further answer by this Court because the decision below is clearly correct in its application of federal labor law and policy and in its construction of the scope and significance of the "lack of jurisdiction" found by this Court in *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962). There is no conflict in the Circuits, this being the only case of this nature in any Court of Appeals.

I. The Decision Below Is Clearly Correct.

At the root of this case is the question whether, under the decision of this Court in *Sinclair*, the limitations of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 104, upon the jurisdiction of federal courts to grant injunctions in labor disputes are to be extended to the state courts, and specifically whether this is to be accomplished indirectly by the procedural device of removal. The Court of Appeals held that the district court did not have original jurisdiction to support removal, a result required by federal labor law and policy as defined by Congress and applied by this Court.

As this Court has already said, there can be no doubt that it was the purpose of Congress in enacting Section 301 of the Taft-Hartley Act, 61 Stat. 156, 29 U. S. C. § 185, to enhance the remedies available for the enforcement of collective bargaining agreements, *Charles Dowd Box Co. v. Courtney*, 368 U. S. 502, 510-513 (1962), and to require the parties to use and abide by the peaceful procedures of arbitration within the terms of such agreements, *Textile Workers Union of America v. Lincoln Mills*, 353 U. S. 448, 455 (1957). In providing that labor organizations should be suable as entities and that suits to enforce bargaining agreements might be brought in federal courts, Congress intended "not to displace, but to supplement, the throughly

considered jurisdiction of the courts of various States over contracts made by labor organizations." *Charles Dowd Box Co. v. Courtney, supra* at 511 (1962).

Certainly there is nothing in Section 301 or its legislative history that would support the conclusion that its intended impact was to impose any limitation upon the jurisdiction of state courts to enforce the provisions of a collective bargaining agreement in a manner consistent with the objectives of federal labor policy.

No limitation upon state court jurisdiction can be found in the Norris-LaGuardia Act since that Act expressly applies only to the federal courts. During the many years that the Norris-LaGuardia Act was in effect before Taft-Hartley there was no basis in law for contending that it imposed any federal limitation on the injunctive power of state courts. Nothing in Section 301 of the Taft-Hartley Act looks in the direction of such a limitation. On the contrary, Section 301 was designed to strengthen the enforceability of collective bargaining agreements by providing additional remedies, and not in any respect to limit the state remedies which were available before its enactment.

In a footnote to *Charles Dowd Box Co. v. Courtney*, 368 U. S. at 514 n. 8, upon which Petitioners rely, this Court refrained from intimating any view on the question of the effect of the Norris-LaGuardia Act upon state power under Section 301. Since *Dowd*, however, this Court, when squarely presented in *Sinclair* with the problem of determining the effect of Section 301 upon the jurisdictional limitations imposed on the federal courts by Norris-LaGuardia, decided the issue in such a way as to indicate that state courts were free to grant injunctive relief for the breach of no-strike clauses in bargaining agreements. In holding that the Norris-LaGuardia Act continues to deprive federal courts of jurisdiction over actions seeking injunctive relief for breach of a no-strike clause, this Court in *Sinclair* was careful to mark the limit of judicial power to fashion uniform federal labor law under Section 301.

The Court expressly refused to use that power to accommodate out of existence the limitation imposed by Congress on the jurisdiction of federal courts through the Norris-LaGuardia Act, 370 U. S. at 209. By the same token, it is clear that the dominant Congressional purposes in the enactment of Section 301 are not to be frustrated by stretching the Norris-LaGuardia Act, an act expressly limited to the jurisdiction of federal courts, to limit the jurisdiction of state courts under the guise of its being uniform substantive labor law, or by procedural gymnastics which accomplish the same result.

The *Sinclair* decision itself was carefully tailored to avoid misinterpretation in these respects. Repeated references to federal or United States courts clearly indicate the limited application of the decision. The question before the Court was resolved as a matter of compelled statutory construction and not through the judicial process of fashioning national labor law. The Court read the strict terms of the Norris-LaGuardia Act as requiring a departure from the federal labor policy of promoting peaceful resolution of disputes through arbitration as previously announced in *Textile Workers Union of America v. Lincoln Mills*, 353 U. S. 448 (1957), and extending through *Local 174, Teamsters Union v. Lucas Flour Co.*, 369 U. S. 95 (1962), even though that policy might be advanced by the availability of the injunctive remedy. And the Court expressly held that the action for injunctive relief was properly dismissed "for lack of jurisdiction".

It is therefore clear that to extend the limitations of Norris-LaGuardia to the state courts under the uniformity rule of *Lucas Flour* would run counter to the legislative intent and the whole thrust of Section 301. Moreover, the availability of an injunctive remedy in state courts for breach of a no-strike clause, a remedy not now available in federal courts, is unaffected by the uniformity principle. For *Lucas Flour* held only that substantive federal labor law must control. As stated in that case, substantive uni-

formity is necessary to prevent uncertainty as to the meaning of particular contract terms, an uncertainty which might arise if there were dual systems of law, state and federal. When viewed in this perspective, the issue of the remedy available for the breach of a no-strike clause is not a question of substantive law. Moreover, the availability of injunctive relief in state courts but not in federal courts will not promote the uncertainty disruptive of the peaceful settlement of disputes sought to be avoided in *Lucas Flour*, but, on the contrary, will contribute to the peaceful resolution of disputes and thus advance a major objective of our national labor policy, industrial peace.

The Court of Appeals was unquestionably correct in its construction of removal jurisdiction in this case. Jurisdiction means power to entertain the suit, consider the merits and render a binding decision thereon. Plainly, if a district court is required under *Sinclair* to dismiss for lack of jurisdiction an action originally brought there, it cannot accept jurisdiction on removal from a state court and retain the case without power to do any more than hold it in suspension and eventually dismiss it. It would be a perverse application of Section 301 to permit by these tactics the frustration of state power resting on such firm judicial and legislative footings.

II. There Is No Conflict of Decision in the Circuits.

This is the only case in any Court of Appeals on this issue.[1] A conflict of views among district courts should not warrant granting the writ. Moreover, the conflict of cases in the district courts has been overstated. Nearly all of the cases cited by the petitioners on this point were decided before *Sinclair*. As already stated in the preceding section of this brief, a proper reading of *Sinclair* disposes of the basis of any conflict.

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1. *Direct Transit Lines, Inc. v. Starr*, 219 F. 2d 699 (6th Cir. 1955) contains dictum which resolves the issue in accord with the decision of the Court of Appeals for the Third Circuit.

III. An Order of Remand Does Not Leave Petitioners Without a Remedy.

There remains for consideration petitioners' contention that the writ should be granted because there are procedural roadblocks to final determination of the issue. Contrary to petitioners' assertion, there is a direct route to test the question of state power. This is through the state courts and from there by certiorari to this Court. Remand opens this avenue to petitioners and others similarly situated. Pending the determination of the question through this procedure, petitioners are not prejudiced, for they have access to the peaceful and expeditious machinery of arbitration to resolve any dispute which might exist. This is the procedural pattern contemplated in the agreements to which the petitioning union is a party. This is the procedural pattern sought in our federal labor policy. *Textile Workers Union of America v. Lincoln Mills,* 353 U. S. 448, 455 (1957); see *United Steelworkers v. American Mfg. Co.,* 363 U. S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U. S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U. S. 593 (1960).

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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